

COURT OF APPEALS
DIVISION TWO

Civil Appellate Procedure

¶1 After pleading guilty to attempted sexual assault, appellant Steven Corrales was convicted and sentenced in 2002 to 3.5 years in prison. The state subsequently petitioned for his detention and evaluation pursuant to Arizona’s Sexually Violent Persons

(SVP) Act, A.R.S. §§ 36-3701 through 36-3717. Corrales moved unsuccessfully to dismiss the proceeding on the ground, among others, that it violated the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution. At a trial in May 2006, a jury found beyond a reasonable doubt that Corrales is a sexually violent person within the meaning of § 36-3701(7), and the trial court ordered him committed for treatment pursuant to § 36-3707(B)(1).

¶2 In the single issue raised on appeal, Corrales contends confinement in the state hospital following a prison sentence constitutes multiple punishment for the same offense and thus violates the constitutional prohibition against double jeopardy. He argues a proper analysis of the issue of multiple punishment requires examining whether a subsequent civil proceeding has among its objectives any punitive goal and whether the sanction imposed in such a proceeding serves any punitive purpose. He maintains the original placement of the SVP Act among the criminal statutes in Title 13, A.R.S., and the Act's provision of procedural safeguards more resembling those afforded criminal defendants than those provided in other kinds of mental health proceedings attest to the quasi-criminal nature of the SVP Act and the true punitive nature of its consequences.

¶3 Despite the cogent, well-developed arguments Corrales presents, the United States Supreme Court has already squarely rejected his contention, albeit in a case involving a challenge to another state's statute. In *Kansas v. Hendricks*, 521 U.S. 346, 117 S. Ct. 2072 (1997), the Court analyzed in depth Hendricks's similar claim that the Kansas SVP

Act violated the prohibition against double jeopardy. The Supreme Court concluded that involuntary confinement under the Kansas Act is not punitive and that the Act does not violate the Double Jeopardy Clause. *Id.* at 369-70, 117 S. Ct. at 2085-86; *accord, Seling v. Young*, 531 U.S. 250, 263, 121 S. Ct. 727, 735 (2001) (holding sexually violent persons could not “obtain release through an ‘as-applied’ challenge to the Washington Act on double jeopardy . . . grounds”).

¶4 In Arizona, the issue has been settled by Division One of this court in *Martin v. Reinstein*, 195 Ariz. 293, ¶ 38, 987 P.2d 779, 793 (App. 1999), a decision our supreme court declined to review. *Martin* similarly holds that, because confinement under the SVP Act is “for treatment and protection of the public, not punishment,” civil commitment pursuant to the Act does not violate double jeopardy principles. *Id.* ¶¶ 38-39. We consider a decision by Division One highly persuasive and will follow it unless it rests on clearly erroneous principles or is otherwise no longer applicable. *See Danielson v. Evans*, 201 Ariz. 401, ¶ 28, 36 P.3d 749, 757 (App. 2001). *Martin* does not fall within that exception. *See In re Commitment of Conn*, 207 Ariz. 257, ¶¶ 7-8, 85 P.3d 474, 476 (App. 2004).¹

¶5 In addition, to the extent the Arizona and Kansas statutes share a common purpose, language, and history, this court obviously is not at liberty to overturn or refuse to

¹Quoting from Justice Feldman’s concurring opinion in *In re Leon G.*, 200 Ariz. 298, ¶ 38, 26 P.3d 481, 490 (2001), Corrales suggests “review of the [state’s] rehabilitative programs” might reflect that the state is merely “incarcerating rather than treating the menatly ill.” But Corrales points to no evidence in the record to support that argument.

follow a decision of the United States Supreme Court on an issue of federal constitutional law. *See State v. Ring*, 204 Ariz. 534, ¶ 61, 65 P.3d 915, 938 (2003) (state court “cannot ignore a Supreme Court decision interpreting federal law unless the Court expressly overrules or casts cognizable doubt on that decision”). We therefore find the trial court properly denied Corrales’s motion to dismiss the SVP proceeding and correctly rejected his argument that confinement under the Act subjects him to double punishment and thus violates the prohibition against double jeopardy.

¶6 Affirmed.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

GARYE L. VÁSQUEZ, Judge